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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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UNITED STATES OF AMERICA,)	
)	3:09-CR-00046-LRH-RAM
)	3:11-CV-00409-LRH-WGC
Plaintiff,)	CA No. 11-17805
)	
vs.)	
)	<u>ORDER</u>
GILBERTO LOPEZ-MONJARAZ,)	
)	
Defendant.)	
_____)	

Before the court is Defendant Gilberto Lopez-Monjaraz's notice of appeal, which the court construes as a request for certificate of appealability. (Doc. #30; *see also* Doc. #33.)

On October 18, 2011, this court entered an Order (Doc. #28) granting in part and denying in part Defendant's motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (Doc. #22). The court granted the motion as to his attorney's failure to file a notice of appeal and accordingly vacated and re-entered the Judgment (Doc. #29) to allow Defendant an opportunity to file an appeal. The court denied Defendant's motion as to the sole remaining issue of ineffective assistance of counsel for failure to raise an *Apprendi* challenge concerning the amount of methamphetamine used in his sentencing calculations. Defendant now appeals the court's denial of relief. (Doc. #30.)

To appeal a final order in a proceeding under § 2255, a petitioner must obtain a certificate of appealability. 28 U.S.C. § 2253(c)(1). To obtain such a certificate, the petitioner must make "a substantial showing of the denial of a constitutional right" with respect to each issue sought to be raised on appeal. *Id.* § 2253(c)(2), (3); *Lambright v. Stewart*, 220 F.3d 1022, 1024-25 (9th

1 Cir. 2000). To satisfy this standard, the petitioner "must demonstrate that the issues are
2 debatable among jurists of reason; that a court could resolve the issues in a different manner; or
3 that the questions are adequate to deserve encouragement to proceed further." *Barefoot v. Estelle*,
4 463 U.S. 880, 893 n.4 (1983) (brackets, internal quotation marks and citation omitted). Any
5 doubts as to whether this standard is satisfied are resolved in the petitioner's favor. *Lambright*,
6 220 F.3d at 1025.

7 In denying relief, the court not only determined that Defendant is not entitled to relief, but
8 also that Defendant had "failed to establish that his claims are anything but frivolous." (Doc.
9 #28, p. 3.) Accordingly, the court concludes that Defendant has failed to make a substantial
10 showing of the denial of a constitutional right.

11 IT IS THEREFORE ORDERED that the request for certificate of appealability is
12 DENIED.

13 IT IS SO ORDERED.

14 DATED this 29th day of November, 2011.



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18 LARRY R. HICKS
UNITED STATES DISTRICT JUDGE
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